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In re Application of	:	
MULLER, Paul A. (deceased)	:	DECISION ON
Application No.: 09/403,329	:	
PCT No.: PCT/FR98/00785	:	PAPERS
Int. Filing Date: 17 April 1998	:	
Priority Date: 18 April 1997	:	UNDER 37 CFR 1.42
Attorney's Docket No.: 33900-56PUS	:	
For: A METHOD AND DEVICE FOR MAKING	:	AND 1.44
A CONTAINER PROVIDED WITH A LABEL	:	

This is a decision on the papers filed 27 December 1999 under 37 CFR 1.42 and 1.44.

BACKGROUND

On 17 April 1998, applicant filed international application PCT/FR98/00785, which claimed a priority date of 18 April 1997. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 29 October 1998. A Demand for international preliminary examination, in which the United States was elected, was filed on 16 November 1998, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 18 October 1999.

On 15 October 1999, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by, *inter alia*, the basic national fee.

On 02 December 1999, the Patent and Trademark Office (PTO) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE U.S. DESIGNATED/ELECTED OFFICE (DO/EO/US) (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a) and (b) and the surcharge under 37 CFR 1.492(e) were required. The NOTIFICATION set a one-month extendable time period for reply.

On 27 December 1999, applicant submitted the present RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE U.S. DESIGNATED/ELECTED OFFICE (DO/EO/US). The RESPONSE was accompanied by, *inter alia*: the requisite fee for the surcharge; a Declaration executed by Colette Potier-Muller as the heir of Paul A. Muller; and a Certificate and an English translation of the Certificate stating that Colette Mueller is the sole heir of Paul Mueller.

DISCUSSION

37 CFR 1.42 states in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Section 409.01(a) of the Manual of Patent Examining Procedure (MPEP) states, in part:

One who has reason to believe that he or she will be appointed legal representative of a deceased inventor may apply for a patent as legal representative in accordance with 37 CFR 1.42. Proof of the applicant's authority as legal representative may be filed after the filing date of the application....

Application may be made by the heirs of the inventor, as such, if there is no will or the will did not appoint an executor and if accompanied by a certificate from the court that they are all the heirs and that the estate was under the sum required by state law for the appointment of an administrator.

If the court papers are in a language other than English, an English translation of such papers is required. The translation need not be sworn or affirmed.

If a court certificate is not available, then a legal memorandum prepared and signed by an attorney at law familiar with the law of the jurisdiction involved may be submitted to demonstrate that the persons signing the declaration on behalf of the deceased inventor are all the heirs of the deceased inventor and are authorized to act on behalf of the deceased inventor. A copy (in the English language) of any statute or any court decision relied upon should be made of record.

The declaration states that Ms. Potier-Muller is "the heir of" Paul A. Muller. However, it is not clear that Ms. Potier Muller is the sole heir. The English translation of the Certificate states that "Colette Mueller" is the sole heir of "Paul Mueller". However, the difference in the names themselves (Colette Potier-Muller in the Declaration versus Colette Mueller in the Certificate) and the spelling of the names (Muller in the Declaration versus Mueller in the Certificate) have not been explained. Also, the address of Paul Muller is entirely different in the declaration than in the Certificate and the address of Colette Potier-Muller is slightly different. These differences have not been explained either. Further, the RESPONSE states that the Certificate is "from the Court of Monaco". However, there are several indications that the Certificate is from Liechtenstein: the header states "FL-9490 Vaduz" (Vaduz is the capital of Liechtenstein); "Vaduz" appears next to the date

"20.10.1999" in the middle of the page; the red stamp appearing on both the Certificate and the translation states "Liechtenstein"; and the Apostille states "Liechtenstein". It is not clear why the Certificate would be from a court in Liechtenstein.

The declaration does not state that Ms. Potier-Muller is the legal representative of the deceased. Applicant has also not provided any indication that a legal representative, other than Ms. Potier-Muller, was not appointed.

In addition, the declaration does not include the citizenship of the deceased inventor as required for compliance with 37 CFR 1.497(a)(3). The declaration filed 27 December 1999 states that Ms. Potier-Muller is a citizen of Switzerland and a resident of Monaco. The declaration also states that Mr. Muller was a resident of Monaco but is silent regarding his citizenship.


CONCLUSION


For the above reasons, the request for status under 37 CFR 1.42 is presently **DISMISSED** without prejudice.

For the above reasons, the proof of authority under 37 CFR 1.44 is **NOT ACCEPTED**.

Applicant is required to submit a declaration in compliance with 37 CFR 1.497 and 1.42 within a time period of **TWO (2) MONTHS** from the mail date of this Decision. **THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 CFR 1.136(a). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.** Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.


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